

The Implementation of Common European Asylum Policy in Spain: A Lesson in
Intergovernmental Politics

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Table of Contents

Section

- I. Introduction
- II. Literature Review
- III. Historical Background
- IV. Research Design
- V. Analysis
- VI. Conclusion

Chapter I: Introduction

Refugees are individuals who are forced from their homes as a result of war, persecution, or natural disaster. They are either directly targeted or fear that by remaining in their country they would be putting their lives at risk. Large refugee camps where thousands live following civil wars or other ethnic conflicts are often photographed and discussed. What is not as commonly considered is the process whereby refugees apply to countries of asylum in the hopes of being accepted and permitted to restart their lives in safety.

Following the end of World War II, world leaders adopted international policies to protect refugees who were at the time emerging from concentration camps and gulags. Furthermore, they wanted to prevent such atrocities from occurring in the future and so enshrined the right to seek asylum in the international law landscape. The 1951 United Nations Convention Relating to the Status of Refugees and the Convention's 1967 Protocol, which gave the Convention universal application, recognize member states' obligation to provide protection to individuals who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion," are outside of the country of their nationality and are "unable or, owing to such fear, unwilling to avail themselves of the protection of their home countries."¹ Additionally, the Convention established the guideline that no participating state "shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political

¹ The United Nations High Commissioner for Refugees, *Text of the 1951 Convention Relating to the Status of Refugees*, 1951, p. 14 available from <http://www.unhcr.org/3b66c2aa10.html>

opinion,”² a principle that has come to be called “non-refoulement.” A majority of the world’s countries have ratified the treaty including all of the European Union member states.

At the time the Convention was established, the UN concurrently initiated the United Nations High Commissioner for Refugees (UNHCR) whose mandate is to “lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide.” In doing so, UNHCR strives to ensure that all may exercise the right to seek asylum. They provide assistance to refugee camps in the form of food and shelter and advocate in both countries of asylum and countries of origin to bring policies, practices, and laws into compliance with international standards.³

Although most nations have agreed, through the Convention, to protect the right to seek asylum for the same class of applicants, procedural differences between European countries have created a world in which certain systems are much more restrictive than others. Though theoretically an applicant should have the same chance of being granted asylum in any country, based upon how “well founded” his fear of persecution is, this vague requirement has been interpreted differently by different countries. Establishing common procedures related to asylum to correct these inconsistencies seems appealing from a human rights perspective if procedures are constructed in a way that is more fair and impartial.

The European Union (EU) has begun to do just this, streamlining asylum procedures like it has integrated many other policy arenas over the past fifty years. Since the close of World War II, European states have begun integrating their policies and procedures. Integration was at first economic and political, designed to promote economic prosperity and lasting peace throughout

² Ibid.

³ "Advocacy." *UNHCR News*. United Nations High Commissioner for Refugees, n.d. Web. <<http://www.unhcr.org/pages/49c3646c104.html>>.

Europe. Motivations for EU integration have shifted over time, with both the security of the EU borders and the promotion of democracy being of much larger concern today than at the EU's inception. Since The Amsterdam Treaty (1997), the EU has paid special attention to integrating procedures related to asylum. While this treaty established a European space of "freedom, security and justice" and the beginnings of common foreign and security policy, Tampere Presidency Conclusions of the European Council two years later made specific reference to asylum, noting the Union's commitment to "develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders." The Council president also professed to be fully committed to the Geneva Refugee Convention.⁴ The Common European Asylum System (CEAS) hoped to bring these goals to fruition. Established in 2005, CEAS is comprised of EU-wide directives on the reception conditions for asylum-seekers, the qualifications for becoming a refugee, asylum procedures, and the "Dublin" regulation, which determines which EU State is responsible for examining an asylum application.⁵

Throughout this paper I argue that intergovernmental politicking has prevented the implementation of CEAS within EU member states. While member states are able to push forward their own agendas of tight borders and restrictive asylum systems, even if they conflict with CEAS, there has been a noticeable lack of enforcement of these directive standards at the EU level. Member states truly dominate this policy arena.

I test my argument with a case study in Spain. My research demonstrates how Spain has successfully evaded specific provisions written into the Asylum Procedures Directive, including

⁴ European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm

⁵ "Common European Asylum System." DGs. Web. <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm>.

guarantees of effective access to asylum procedures, access to UNHCR, standards on detention, access to legal representation, and standards on nationality determinations. Spain has successfully pushed forward its agenda of tight borders at the EU level, negotiating increases in EU border patrol of its coasts and remittance agreements with African countries so that it can offload its refugee burden. Meanwhile, the European Commission has not utilized any enforcement mechanisms to punish Spain for its blatant non-compliance with the Asylum Procedures Directive. While the implementation of EU-level directives throughout member states is often a slow process and the Directive was only passed eight years ago, non-compliance in this situation is more than not yet having resources in place; Spain very clearly has a conflicting agenda, and domestic actors have chosen to work towards their own ends, undermining CEAS in the process.

Overall, this thesis examines asylum policy through the lens of EU integration theory. Chapter two provides the theoretical context within which I situate my research. In chapter three I give historical background for my research. In chapter four, I introduce my research design. Chapter five contains my research, analysis, and theoretical connections, and in chapter six I conclude my theoretical analysis and touch on alternative strategies for addressing asylum policy divergence.

Chapter 2: Literature Review

Throughout this thesis I show that intergovernmentalism has undermined the implementation and success of CEAS in the European Union. This chapter is devoted to defining and explaining intergovernmental theory and how it predicts what is currently happening in

Spain. I also discuss neofunctionalism and how it predicts the implementation of EU policy, though I find it does not adequately explain my findings.

Intergovernmentalism and neofunctionalism are the two key opposing theories on who drives EU integration. Intergovernmental theory postulates that decisions are made at the member state level. Intergovernmentalists differ with neofunctionalists in that they argue that the process of community building has proceeded through intergovernmental bargains, rather than through supranational bureaucrats. They contend that supranational governance is formed at the domestic level, a process driven by member states and their national interests.⁶ Moravcsik outlines his model into three stages—foreign economic policy preference formation, inter-state bargaining, and institutional delegation—each of which is explained by different factors. National preferences, he argues, are constrained by domestic economic interest that can be usurped by geo-political or ideological motivations if these economic interests are not strong or uniting. The role of supranational actors is weak, limited to situations where they have “strong domestic allies.”⁷

On the other hand, neofunctionalism recognizes the importance of nation states, but places major emphasis on the role of two sets of non-state actors in providing dynamic for further integration: (1) the secretariat of the organization involved and (2) those interest associations and social movements that form around it at the level of the region. According to this theory, regional bureaucrats seek to exploit the “unintended consequences” that occur when states agree to assign some supranational responsibility and then discover that this function has external effects upon other independent policy arenas. Citizens shift more and more of their

⁶ Andrew Moravcsik, *The Choice for Europe: Social Purpose & State Power from Messina to Maastricht*, (Ithaca: Cornell University Press, 1998).

⁷ Moravcsik, Andrew. "Liberal Intergovernmentalism and Integration: A Rejoinder ." *Journal of Common Market Studies*. no. 4 (1995): 611–628.

expectations to the region and satisfying them will increase the likelihood that economic-social integration will ‘spillover’ into political integration.⁸

Neofunctionalism correctly predicted the fact that interdependencies of member state economies would spillover: the integration of monetary affairs and capital markets and the creation of a genuine common market serve as evidence. Some point to the fact that most government functions are at least under the purview of the EU as further evidence of neofunctional integration. Neofunctionalists would say that the development of common asylum standards is even further spillover. Critics argue that what has looked like “spillover” since the 1970s can be attributed to external shocks. As a result, the role of “Eurocrats” in this integration process, which neofunctionalism predicts to be prominent, may instead be negligible.⁹ Critics further contend that neofunctionalism may have exhausted itself, especially with expansion to new member states—it is difficult to find a policy area where such diverse member states are willing to give up national sovereignty for an acknowledged “common need” that would best be regulated by the EU.¹⁰

Applying EU Integration Theory to EU Asylum Policy

These two theories—intergovernmentalism and neofunctionalism—have been applied more recently to asylum policy development in the EU. Some see the process characterized by member state agreements rather than supranational spillover. For example, Freeman and other contributors to Joppke’s *“Challenge to the Nation State: Immigration in Western Europe and the United States”* argued over a decade ago that while immigration policy arenas were more

⁸ Schmitter, Philippe, "Ernst B. Haas and the legacy of Neofunctionalism." *Journal of European Public Policy*. no. 2 (2005): 255-272 (p. 257),

⁹ Ibid., 266.

¹⁰ Ibid., 267.

complex then (1998) than they had been since the inter-war era, any cooperation in the migration and asylum policy arenas between nation states had been a means of enhancing state attempts to bar entry to asylum-seekers.¹¹ Freeman argued that states could amount certain immigration policies, but domestic politics rather than external pressure are what undermine such efforts. His theoretical approach to asylum policy integration is intergovernmental in nature.¹²

Other scholars take intergovernmentalism a step further in asylum theory arguing that there is still no real system of European asylum policy. Juss argues that negotiations have led to a “lowest common denominator” of procedures, in other words, a system where only the most non-controversial procedures are enshrined into law. This phenomenon is something that follows from Freeman’s theory that member states will only go to the EU to implement asylum standards that are mutually beneficial. This has negative implications for the adoption of human rights at a supranational level, and Juss argues that the “lowest common denominator” phenomenon has in fact lead to discrepancies between countries and lower standards of human rights across the board.¹³

Similarly, Pirjola argues that human rights language in Common European Asylum System provides a scant guide on how to develop and implement European asylum policies on the ground, arguing, “We should not try to hide the development of the European asylum system behind the obscurity of legal reasoning or institutionalized rights language, but see the emerging common asylum system as a result of different and often conflicting priorities, power struggles and ideological influences.” The differing priorities and ideological differences of member states

¹¹ Gary Freeman, "The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States," *Challenge to the Nation-State: Immigration in Western Europe and the United States*, ed. Christian Joppke (Oxford: Oxford University press, 1998), 89.

¹² Ibid., 91.

¹³ Satvinder Juss, "The Decline and Decay of European Refugee Policy," *Oxford Journal of Legal Studies*, 25, no. 4 (2005): 749-792,

in the arena of asylum policy, Pirjola finds, make the implementation of common asylum standards unlikely, even in the face of strongly professed human rights commitments at the supranational level.¹⁴

The preceding scholars find common asylum policy throughout the EU to have been dominated by member state preferences, developing over time as the result of intergovernmental bargains rather than supranational policy-making. In contrast to these arguments, some scholars believe common asylum policy has been formed more successfully at the supranational level. For example, Kaunert notes the positive, impactful role of the European Commission in shaping policy. He disagrees with intergovernmentalist EU scholars who discredit EU institutions as futile in the integration process, arguing that the Commission in fact played a significant role as a supranational policy entrepreneur, anchored in the Geneva Convention.

Some of the progress that Kaunert notes in the first stage of asylum policy integration under the Tampere Programme includes a set of minimum standards that ensure that states are not competing with each other for restrictiveness of policy. He disagrees with other scholars who see these minimum standards as a sign of slow rather than noteworthy progress. In addition to touting these minimum standards, Kaunert notes the historical significance of the four asylum policy directives of 2005 in opening up decision-making in the Common European Asylum System. He argues that they transfer national sovereignty to the EU level, enshrining the Geneva Convention into EU law.

Kaunert suggests that at the political bargaining stage, where choices between different policy alternatives are made, member state preferences and interests dominate the EU. In principle, this supports the liberal intergovernmental analysis of asylum policy. This

¹⁴ Jari Pirjola, "European Asylum Policy - Inclusions and Exclusions under the Surface of Universal Human Rights Language," *European Journal of Migration and Law*, 11, no. 4 (2009): 347-366,

intergovernmental analysis fails, Kaunert suggests, because it assumes that national interests are stable before they come to the “bargaining table.”¹⁵ This is incongruent with the current EU system where member state representatives continuously interact with each other at different levels of government. Kaunert argues that the Commission’s strategy in asserting its dominance over the formation of asylum policy was two-fold: first, it constructed a link between the single market and the EU action in asylum matters. Second, it constructed EU asylum action into international prevailing norms on refugee protection through the Geneva Convention, which in turn gave the Commission more legitimacy as an actor. Kaunert’s findings support Neofunctionalist theory about the shaping of norms and interests at a supranational level in the case of asylum policy.

After examining the case of Spain, it is clear that intergovernmentalism rather than neofunctionalism best explains the development of European asylum policy. The distinct priorities and xenophobic ideologies of Spain have prevented meaningful change to the member state’s restrictive asylum policies and the implementation of common asylum standards. These patterns bolster intergovernmental interpretations of European asylum policy integration where member state priorities and ideologies are said to dominate and usurp the progress of integration if member state priorities differ with supranational mandates. Kaunert and other scholars who provide a neofunctional interpretation of asylum policy integration miss the mark. Kaunert may be correct in noting that the European Commission constructed a link between the single market and EU action on asylum in order to give the EU legitimacy to create the CEAS directives, this being a pattern that neofunctionalism would predict. Nevertheless, Spain has demonstrated that such supranational standards can be blatantly evaded without enforcement or consequence from

¹⁵ Christian Kaunert, "Liberty versus Security? EU Asylum Policy and the European Commission," *Journal of Contemporary European Research*, 5, no. 2 (2009): 148-170 (p. 156),

the Commission, signaling the ultimate power of member states over the asylum process. The Directives are rather weak if member states can so successfully avoid their mandates.

Chapter 3: Historical Background

After situating my argument within a larger theoretical context, I now provide background on the development of European asylum policy. The evolution of CEAS has occurred gradually since the mid 1980s and rapidly since the turn of the twenty-first century. The Schengen Agreement, signed in 1985, initiated the gradual abolition of border checks and harmonization of visa policies throughout Europe. Belgium, the Netherlands, Luxembourg, France, and Germany signed the Agreement in 1985, and Spain signed on in 1991. The “Schengen area” now operates like a single state in the sense that there are no internal border controls: once one enters the European space through a border country, there is no need to show a passport. Elimination of internal borders prompted the push for streamlined external borders. If an individual admitted to the EU space could move freely throughout it, it would be important to ensure standards of admission were consistent from a security perspective, to prevent the admission of criminals and terrorists, as well as from a liberty perspective, to ensure the admission of refugees and well-deserving immigrants.¹⁶ Related to asylum, the Agreement established a State responsible for examining each asylum application, a procedure, an exchange of information, and preliminary protocol for the circulation of foreigners.¹⁷ The Dublin Convention, signed in Dublin in June of 1990, is the common name for the provision that determines which state is responsible for examining an asylum application that is lodged in a

¹⁶ Daniele Joly, "The Porous Dam: European Harmonization On Asylum In The Nineties," *International Journal of Refugee Law*, 6, no. 2 (1994): 159–193 (p. 160),

¹⁷ *Ibid.*, 163.

member state of the European Community. It and the Schengen Agreement both dictate that the first country that the applicant entered must process the application.

As has been touched upon, the 1999 Amsterdam Treaty marked a large step in the process of developing common asylum standards. While seeking to establish the Area of Freedom, Security and Justice (AFSJ), member states also sought to create a single protection area for refugees based upon the full application of the Geneva Convention. Soon after the Amsterdam Treaty, the European Council reaffirmed this commitment within the Tampere Presidency Conclusions by agreeing to work towards establishing a “Common European Asylum System” (CEAS).¹⁸ Specifically, they vowed to adopt: “In the short term, a clear and workable determination of the State responsible for the examination of an asylum application, a common standard for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status.”¹⁹

All five measures required of the EU under the Amsterdam Treaty were eventually adopted. Among them were the Temporary Protection Directive, the Reception Conditions Directive, the Dublin II regulation, and the Asylum Qualification Directive, adopted in 2004 and 2005.²⁰ It is widely agreed that the formation of CEAS that culminated in the 2005 Directive did nothing more than enshrine the lowest common denominator of asylum regulations and procedures into law. There was no change in thinking which prompted states to come together and adopt a more asylum-respecting common policy, rather, it was a spillover from the

¹⁸ European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm

¹⁹ Ibid.

²⁰ Christian Kaunert, and Sarah Leonard, "The European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?," *Refugee Survey Quarterly*, 31, no. 4 (2012): 1-20 (p. 10),

integration of other policies, a necessity to streamline border controls following the Schengen Convention and Amsterdam Treaty.²¹ Despite the rhetoric in spaces like the Tampere Conclusions, asylum integration has been rationalized on the basis of the EU's establishment of a single market without borders. Without internal borders, the need to establish a streamlined system of controlling external borders becomes apparent. The Common European Asylum System, therefore, is not driven by a desire to elevate standards of protection afforded by each country for the sake of human rights, but rather a desire to keep up with other aspects of EU integration.

The UNHCR has in fact been vocal about its concerns over CEAS legislation and its likelihood of preventing the enforcement of international standards of refugee law. The Asylum Procedures Directive was opposed by many NGOs who called for its absolution. UNHCR voiced its opinion by saying that "several provisions ... would fall short of accepted international legal standards...[and]... could lead to an erosion of the global asylum system, jeopardizing the lives of future refugees." Despite these objections, the Directive was adopted.

After an evaluation of the CEAS in the 2007 Green Paper, it was noted that not much was happening in the way of protecting refugees. The Commission observed, "The agreed minimum standards had not created the desired level playing field." Though the initial deadline for CEAS adoption was 2010, it was postponed until 2012 in the European Pact on Immigration and Asylum, adopted in 2008.²²

Under the Lisbon Treaty in 2009, the EU was granted competencies beyond the mere ability to establish minimum standards. In fact, the Union may now adopt a consistent status of

²¹ Cathryn Costello, "The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection, and the Dismantling of International Protection?," *European Journal of Migration and Law*, 7, no. 1 (2005): 35-69 (p. 37),

²² Kaunert and Leonard, 15

asylum throughout the EU and common procedures for granting and withdrawing asylum and subsidiary protection.²³ The European Court of Justice is also granted primary jurisdiction in matters of asylum, which some believe will lend it to seeing an increase in the number of asylum cases. Finally, the EU Human Rights Charter now has the force of law in the Union, and the right to asylum with “due respect for the rules of the Geneva Convention” is explicitly guaranteed under article 18.²⁴

In 2009 the EU adopted the Stockholm Programme, the next phase of the AFSJ that envisions uniform status for those granted asylum and a Commission to investigate possibilities for promoting practical cooperation amongst member states. The Programme states, “subject to a report from the Commission on the legal and practical consequences, the European Union should seek accession to the Geneva Convention and its 1967 Protocol.”²⁵ There is no doubt that since the adoption of the 2005 Directive, the EU institutions have made an even greater rhetorical commitment to upholding the Geneva Convention. As I show in my analysis, these commitments have not been borne out through the implementation process.

Chapter 4: Research Design

I test the argument explained above by focusing on a single case study—Spain. My research involves first hand accounts from parties directly involved in the asylum process. Specifically, I use reports from UNHCR in the Canary Islands and Amnesty International to show how Spanish practices do not meet Asylum Directive requirements. I use Spanish

²³ Kaunert and Leonard, p. 15.

²⁴ Charter of Fundamental Rights of the European Union, OJ C 364/01, 18 Dec. 2000 (entry into force: 1 Dec. 2009). Can be accessed: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

²⁵ Council of the European Union, The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens,

newspaper articles to assess xenophobic attitudes and sentiment towards asylum seekers in Spain and offer explanations for Spain's non-compliance. Ultimately, I demonstrate Spain's control over this policy arena at their Canary Island territories and the subsequent intergovernmental nature of asylum policy in the EU.

Both the argument that I support with my research and the additional hypotheses that I derive from my study can be tested elsewhere—in other member states, through their implementation of CEAS, and in the integration of other EU policies. My study is useful in that it highlights intergovernmental aspects of EU integration and might make intergovernmental theory more readily accepted. Spain is a particularly interesting country for my case study for a number of reasons, some historical and some more current. As a consequence of Francisco Franco's isolationist dictatorship lasting until 1975, Spain remained estranged from its European neighbors economically and politically until it joined the EU in 1986. This was over thirty years after the European Coal and Steel Community, the first iteration of the EU, had formed.²⁶

Under the Franco regime and until the mid 1980s, Spain had been a country of emigration. In fact, the country possessed no immigration policy whatsoever coming out of the dictatorship. Immigration was not considered a threat economically or socially when initial asylum policies were crafted as a part of the country's democratization process. Before Spain joined the EU, the Spanish Parliament approved the *Act on the right of asylum and refugee status. (La Ley 5/1984)*,²⁷ setting up what is now considered a generous system for asylum, especially in comparison to Spain's current standards. The law was used by both refugees and non-refugees to immigrate to Spain: because of the freedom it granted applicants to remain in the

²⁶ European Union, "How the EU Works-Countries." Accessed April 4, 2014. http://europa.eu/about-eu/countries/index_en.htm.

²⁷ Maria Teresa Gil Bazo, "The Role of Spain as a Gateway to the Schengen Area: Changes in the Asylum Law and their Implications for Human Rights," *International Journal of Refugee Law*, 10, no. 1/2 (1998): 214-229 (p. 214),

country until proceedings were over and the periods of amnesty that the Spanish government enacted, many illegitimate refugees were able to remain in Spain permanently. While Northern European countries began to tighten their borders as a reaction to rising unemployment, Spain for the first time became a net recipient of immigrants.²⁸ The country saw an increase in asylum applications from 1,000 in 1984 to 12,000 in 1993. This period of asylum application growth coincided with the global recession, which riddled Spain with high unemployment. The Spanish government drastically altered its asylum policies in 1994 as a consequence of the country's economic landscape and the government's ratification of the Schengen Convention where it agreed to reinforce external borders and suppress checks at internal borders.

Spain has a notoriously strict asylum system meaning more would be required for the Spanish government to move away from current practices than other member states. This restrictive regime began in 1994 with *La Ley 9/1994*. The addition of inadmissibility procedures under this law created what remains a very challenging system for asylum applicants. Through this system there are six criteria for inadmissibility, under which an application can be dismissed without further review.²⁹ Under this regime, the first officer to process the claim has complete discretion over whether the claimant may be sent to the next round of review, and the claimant has a very limited appeal process. If a claim is found admissible, the application then enters the process for full consideration.³⁰

As of 2005, only 30% of applicants made it past the inadmissibility phase of proceedings to have their application meaningfully reviewed by a panel.³¹ Those who pass inadmissibility

²⁸ Ibid., 215.

²⁹ Ibid., 225.

³⁰ Anna Marie Gallagher, José Riera, and Maria Riiskjaer. *Refugee protection and international migration: a review of UNHCR's role in the Canary Islands, Spain*. Geneva: United Nations High Commissioner for Refugees Policy Development and Evaluation Service, 2009 (p. 39). Can be accessed: <http://www.unhcr.org/4a1d2d7d6.pdf>

³¹ Maryellen Fullerton, 'Inadmissible in Iberia: The Fate of Asylum Seekers in Spain and Portugal', *Oxford University Press*, 2005, 660–687 (p. 670).

proceedings face a committee comprised of individuals from different ministries who review the merits of applications and recommend whether the Minister of the Interior should grant asylum. The Office of Asylum and Refugees (OAR) staff is responsible for reviewing claims and preparing the reports, and UNHCR in Spain sends a non-voting representative to these meetings to provide their perspective. Any rejected applicant may appeal to the National Administrative Court in Madrid. Following the ratification of the Treaty of Lisbon, all applicants *should* also be allowed to appeal their decisions to the European Court of Justice, though this has proven to be highly unfeasible for many of the asylum-seekers entering through Spain. The Spanish government is currently working to incorporate EU legislation with respect to the Asylum Procedures Directive.³²

The Spanish government has taken the position that their asylum and immigration policies have no effect beyond the 12 nautical mile limit off of their shores.³³ Coupled with the push for an externalization of borders, this makes for a further limitation on access to asylum. Mixed migration adds difficulty to determining who can lawfully be turned back to Africa (economic migrants) and who must be allowed to formally apply for asylum under international law (legitimate refugees). Adding further complication to migration via the Mediterranean Sea is the fact that many refugees are brought by smugglers because they believe it is the only feasible way to get to the EU space. All of these factors complicate the Spanish response to asylum seekers.

As a result of illegal immigration from Africa across the Strait of Gibraltar, there is a strong anti-immigrant sentiment throughout the country, one that extends in part to asylum seekers who are lumped in with their other African counterparts. Spain, then, is a good place to

³² Gallagher, Riera, and Riiskjaer, 39.

³³ Ibid.

study the way in which domestic racism hinders the capabilities of common asylum procedures, where those involved in the process have a desire to keep foreigners out.

Additionally, the poor economic situation in Spain makes it a compelling case to study. With unpopular austerity measures being enacted and a debilitating 27% unemployment, it is not surprising to find that Spain restricts who can enter the country and be granted asylum. Immigrants are often considered, whether or not the consideration is well founded, to be a drain on a state's resources. In the case of asylum seekers, maintaining detention centers and other asylum infrastructures is costly.

Additionally, the most persuasive reason why Spain should be studied is that the number of asylum applications to Spain has hit a twenty-five year low, while the Eurozone as a whole experienced a large increase in applications.³⁴ This is in light of the Arab Spring revolutions that have produced mass refugee crises in neighboring Middle Eastern and African states. I find this can be explained, in part, by Spain's extremely inaccessible asylum system.

All of the preceding historical and present factors combine to make Spain a fascinating location for this study. Answering the questions that Spain's asylum procedures raise will help derive broader implications for the consequences of boat migration, refugee rights during times of economic crisis, and the conflict between human rights, security, and economic prosperity throughout the European Union.

Chapter 5: Analysis

My research focuses on asylum conditions specifically in Spain's Canary Islands territories. The Canary Islands are an archipelago located off of the northwest of the coast of

³⁴ Comisión Española De Ayuda Al Refugiado. *La Situación De Las Personas Refugiadas En España*. Madrid, 2013.

Africa, an entry point to Spain and the European space for people from West and North Africa. The distance from Mauritania, a popular point of departure for immigrants and asylum seekers, to the Canary Islands is only 800 kilometers, while the distance from Senegal is 2,000. Those wishing to make the treacherous voyage must pay a human smuggler handsomely, sometimes several thousands of Euros, or organize the journey on their own. The trip can take between five and fifteen days and is quite treacherous.³⁵ As of 2009, it was estimated that between 400 and 1000 people have perished off the coast of West Africa attempting this journey.³⁶

As has been previously noted, the Asylum Procedures Directive is a part of the most recent developments in EU law toward a common asylum system. This directive is intended to harmonize procedural guarantees and create minimum standards for granting and withdrawing refugee status within the Member States. It contains certain guarantees, for example, the right to an interview regarding one's application, the right to communicate with UNHCR, the right to an attorney throughout the process, and the right to appeal a negative decision. The Directive claims to fully incorporate and apply the rights of the 1951 Geneva Convention consistently throughout all of the Member States, to all applications for asylum made within the Schengen area. My analysis consists of comparing guarantees of the Directive against practices documented by Amnesty International and UNHCR in the Canaries. I point to the externalization of borders and remittance agreements with third countries as the main mechanisms through which Spain has evaded its commitments to CEAS.

Externalization of borders

Dubbed by many human rights groups as "Fortress Europe," the EU has sought for the past ten years to push the burden of dealing with immigrants and asylum seekers further away

³⁵ Gallagher, Riera, and Riiskjaer, 8.

³⁶ Ibid.

from the Schengen area and back to countries of departure. In this way, many argue, it has tried to make the European space inaccessible to foreigners. Since 2006, there has been a clear focus within the EU on integration of border management (IBM). This has been articulated as “a more effective protection of external borders” in order to tackle “illegal immigration and human trafficking.” IBM has attempted to externalize borders, a process which is two-fold. On one hand, the funding and breadth of missions for the EU-wide border control force, FRONTEX, have been increased since 2007. On the other hand, EU member states have signed readmission agreements with many African countries, ensuring that anyone who is either a citizen of one of these countries or has passed through one on the way to the EU may be returned unequivocally.

IBM legitimizes the promotion of a regime of control and surveillance of borders where halting the ability of third country nationals from entering the Schengen territory is the main priority. There is an overall concern for human rights and the protection of the rights of migrants in light increased monitoring of the Mediterranean. An emphasis on the restricting borders against undocumented migrants and smugglers has contributed to a lack of common asylum procedures and inadequate refugee protection in Spain. Most basically, practices of interception and diversion at sea prompt questions about the principle of “non-refoulement” and whether or not Spain is in violation of this Geneva Convention and Directive provision by sending people back to third countries without ascertaining the danger they face. Since only the Spanish authorities, not UNHCR or other NGOs, have access to the boats that these immigrants travel on, it is difficult to determine how often refugees who express a desire to apply for asylum are sent back, or how often authorities even ask passengers if they plan to seek asylum prior to diverting them. While IBM is the EU-wide framework through which Spain has worked, Spain has driven the process of refugee exclusion with the assistance of EU bodies like FRONTEX.

IBM Prong 1: FRONTEX Activity

FRONTEX is charged with aiding member states in the management of their external borders and aiding their authorities in working together. The operational area that is relevant for my study is its charge in assisting member states in joint returns operations, which it claims to do by “maximizing efficiency and cost-effectiveness while ensuring respect for fundamental rights and human dignity of returnees ... at every stage.”³⁷

The EU has made an effort to emphasize that member states direct and have final say over activity surrounding their external borders and the use of FRONTEX. The Council Regulation that sets up FRONTEX in fact starts by saying that “the responsibility for the control and surveillance of external border lies with the member states.”³⁸ FRONTEX can only act based upon member state request or in agreement with member states. FRONTEX, since its inception, has been on high demand from particular members that deal with the external borders of the EU. As a consequence, FRONTEX activities are often ‘emergency driven’ and the result of political pressure from individual member states for more help protecting the border from undocumented migrants. The Spanish government has been very successful in driving forward their situation at the Canary Islands to the front, demanding and receiving much help from FRONTEX, though the Spanish media and government have heavily dramatized the gravity of the immigrant situation.

HERA I was the first operation in the Canary Islands by FRONTEX, based on a request from Spain in May of 2006. It started on July 17, 2006 and lasted until October 31, 2006. The

³⁷ FRONTEX, "Mission and Tasks." Accessed April 4, 2014. <http://www.frontex.europa.eu/about-frontex/mission-and-tasks>.

³⁸ Sergio Carrera, "The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands," *Centre for European Policy Studies*: (p. 11, 14), <http://ssrn.com/abstract=1338019> (accessed).

operation was originally expected to last until August, but it was extended twice. According to FRONTEX, a total of 18,987 undocumented immigrants landed in the Canary Islands during the course of this operation as of December 2006, and in only 100 of these cases could a country of origin be determined.³⁹

HERA II began in August of 2006 and lasted until December of 2006. As of 2008, it was the longest-running joint operation ever coordinated by FRONTEX. The purpose of this operation was to facilitate technical equipment for border surveillance in order to control the space between the African coast and the coast of the Canary Islands. If boats were already found at sea, the objective of this mission was to intercept them in the territorial waters of the African country and send them back so that the authorities there would have to deal with handling the immigrants and returning them to their country of origin. Clearly, HERA II involved externalization of EU border control to third countries, a practice that rests on bilateral remittance agreements with third countries, namely Mauritania and Senegal. FRONTEX declared that more than 3,500 migrants were stopped during the course of HERA II and the flow of undocumented migration has decreased drastically.

Spain's maneuvering of FRONTEX coast guard to patrol maritime borders is clearly an example of intergovernmental politics. Spain has successfully driven its own political desires forward in the domain of immigration and asylum policy and the EU has been responsive. Furthermore, it is quite clear that their key practices have violated the Asylum Procedures Directive. One of the first guarantees within the directive is that decisions for asylum be taken "on the basis of facts and, in the first instance by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters."⁴⁰ It is

³⁹ Ibid., 20.

⁴⁰ Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 1.

evident that this condition is not being met in the Canary Islands. According to the European Commission, the priority of HERA II and HERA III was to intercept pateras and cayucos, small makeshift boats, in territory of the third country and then the authorities of the sending country could deal with the migrants and either return them to their territory or process their asylum claim:

“When a target is seen, they get in touch with the other FRONTEX means deployed and FRONTEX local coordination centre in Santa Cruz de Tenerife and prepare the interception. Normally the Senegalese boats escort the migrants inshore, start the legal procedure and try to arrest the people that were paid for organising the journey.”⁴¹

Any refugees that are on these boats are dealt with by FRONTEX, who might have some expertise in asylum claims, but whose principle goal is to intercept and divert these boats back to Africa before asylum seekers even have the opportunity to voice claims and be given the right to seek asylum within the EU territory. A second, related guarantee is

“Effective access to procedures...the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Should provide at least the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting case and the opportunity to communicate with a representative of the United Nations High Commissioner for refugees or with any organization working on its behalf. In language he/she can understand.”

Asylum-seekers heading to the Canary Islands are granted no such right to stay pending a decision, access to an interpreter, or a meeting with UNHCR. UNHCR has expressed its legitimate concerns about the practices taking place in the Canary Islands, making a number of recommendations in 2009 for how to better cope with mixed migration and uphold the Geneva Convention. One of their principle concerns is the activity of FRONTEX and the scant information that is known about what happens when a ship is intercepted and diverted at sea.

⁴¹ European Commission, DG Communication, News, *EU Immigration: Frontex Operation*, 12/09/2006. Cited from Carrera, p 21.

“(iv) *Address interception and diversion.* Little is currently known concerning the protection implications of the interception and diversion activities carried out by FRONTEX off the coast of West Africa. In order to ascertain whether refugees are being returned during these operations, UNHCR Spain should maintain regular contact with relevant UNHCR offices, including those in Mauritania, Senegal and the UNHCR FRONTEX liaison Office in Warsaw.”⁴²

Because FRONTEX, not UNHCR, has access to these boats there is a very serious threat that refugee rights are being violated. Furthermore, UNHCR has a Directive right to speak with all applicants:

“Article 29: The Role of UNHCR
Member States shall allow UNHCR: (a) to have access to applicants, including those in detention, at the border and in the transit zones.”

FRONTEX is theoretical obligated to allow refugees to continue to the Canary Islands to submit asylum applications, but their core mission dictates that they largely prevent this from happening through interception, diversion, and maintenance of the “integrity” of the EU Schengen territorial border. UNHCR does not have a great relationship with FRONTEX at the Canary Islands, and FRONTEX is not concerned with establishing a relationship. To make matters worse, there is no permanent UNHCR office on the Canary Islands.

“UNHCR Spain has requested on several occasions to meet with FRONTEX personnel in the Canaries during visits to the islands. The requests have been denied, however, giving the impression that FRONTEX wishes to keep UNHCR at arms length. The FRONTEX position appears to be that it sees no real need to develop a working relationship with UNHCR, as its role is limited to gathering information for border security purposes. Any queries or comments on the part of UNHCR, according to FRONTEX, should be directed to its Headquarters in Warsaw.”⁴³

The externalization of EU maritime borders is a cause for great concern for refugees attempting to seek asylum at the Canary Islands. It is clear that these refugees are not granted the rights they are entitled to under the Geneva Convention or the Asylum Procedures Directive.

⁴² Gallagher, Riera, and Riiskjaer, 2.

⁴³ Gallagher, Riera, and Riiskjaer, 28.

Prong 2: Readmission agreements and the concept of safe third countries

Readmission agreements most basically define the obligation of a country to readmit its citizens and citizens of third countries who have passed through its territory.⁴⁴ As a part of the push to externalize border control and stem flows of irregular migration, EU member states have urged migrants' countries of origin and countries through which they commonly travel to agree to readmission agreements.. Spain has a number of relationships with Western African countries, namely Mauritania and Senegal. Spain has enacted bilateral agreements with financial incentives to gain the support of countries of origin. They have established “six new embassies in West Africa countries and allocated nearly 700 million Euros in development aid” to the region.⁴⁵ Spain forces these countries of departure to become complicit in the European project of externalizing borders.

Human rights concerns arise, first, at the designation of many of these countries as “safe” third countries. Irregular migrants are returned to these countries through readmission agreements, and it is up to these countries, then, to deal with asylum seekers that may have traveled there en route to Europe. The responsibility to effectively process asylum applications is transferred to the third country, though many of them do not have adequate asylum systems in place. In Mauritania, a country that Spain has signed remittance agreements with, third country nationals have reported being beaten and arrested arbitrarily because security forces believed they were planning to depart for Europe. Some of these people told Amnesty International that they were in Mauritania legally, and yet during their arrest, security forces destroyed their residence permits.⁴⁶ Since 2006, migrants accused of setting out from Mauritania with the

⁴⁴ *Readmission Agreements: A Mechanism for Returning Irregular Migrants*. Rep. no. 12168. Strasbourg: Council of Europe, 2010.

⁴⁵ Gallagher, Riera, and Riiskjaer, 7.

⁴⁶ Amnesty International. *Mauritania: Nobody Wants to Have Anything to Do With Us*. London, 2008.

intention of entering the Canary Islands have been arrested and returned to Mali or Senegal without any ability to appeal this decision.⁴⁷ There is fear from Amnesty International and other human rights organizations that such ill behavior is an effect, in part, of the heightened pressure from the EU on the Mauritanian government to prevent migrants from departing for the EU.⁴⁸

“Several of the migrants Amnesty International met at the detention centre at Nouadhibou told how the security forces had treated them roughly or insulted them at the time of their arrest. Most had been robbed of some of their possessions and many said that they had been arbitrarily arrested in the street or at home, when they were not making preparations to try to reach Europe irregularly. It is possible that some of these people were present in Mauritania irregularly, but others stated that their papers were in order and that they had seen these documents confiscated or torn up by the security forces at the time of their arrest.”⁴⁹

This is troublesome, and begs the question of what responsibility Spain has in these abuses since it is Spain that so heavily lobbies for Mauritania to stop would-be immigrants before they depart. Spain even arms the Mauritanian authorities to facilitate this process. A further Directive guarantee that a “safe third country” can only be dubbed such if the asylum-seeker feels safe is also violated by these practices:

“It is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.”

If immigrants are able to successfully depart from these countries of origin, a key next step in these relationships is the help coast guards of these countries provide in steering identified boats back to the African continent. This practice goes directly against provisions of the Asylum Procedures Directive. If the authorities are steering them out of the European territory before even asking them their purpose in reaching Europe, we can assume they are not “informing them in a language which they understand...the procedure to be followed and their

⁴⁷ Ibid., 2.

⁴⁸ Ibid.

⁴⁹ Ibid., 18.

rights and obligations during the procedure of asylum,” a Directive guarantee. They are certainly not granting an interpreter.

Returning these individuals before they can even make asylum claims and lumping all migrants as undocumented without recognizing the fact that many do in fact have very legitimate asylum claims, is nothing more than Spain transferring a refugee burden it does not want to deal with to another country. These practices prevent refugees from gaining access to asylum procedures, the hallmark guarantee of the common asylum system. They also clearly violate the principle of non-refoulement, as many of the countries where refugees are returned are corrupt and do not possess true asylum systems.

Externalization of border management is a way to push the European “immigrant problem” out of sight and out of mind, which is a very serious problem from the perspective of international refugee law. Basic principles of the Geneva Convention are being violated, and this process undermines the push for an “EU single protection area for refugees, based upon the full and inclusive application of the Geneva Convention,” the philosophy that has been touted at European Council presidency conclusions for the past decade.⁵⁰

Reception Conditions at the Canary Islands

According to UNHCR, upon arrival, the Spanish Red Cross provides immediate assistance to save lives. After immediate needs are assessed, however, irregular immigrants are transported to a police station. It is here that they are interviewed and preliminary determinations are made. Each arrival is provided with a lawyer to represent him/her throughout these initial proceedings, although little time is spent with clients, each lawyer typically is assigned five or six persons, and

⁵⁰ European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm

new arrivals spend several days in the police office before being transferred to a detention center.⁵¹ CEAR, the Spanish Commission for Refugees, has limited access to the detention centers. There are four lawyers for CEAR who are called by officials at the centers when there are new arrivals, and just these four lawyers were responsible for identifying potential refugees out of the total 8,300 immigrants that arrived in 2008.

There are a number of obstacles that refugees face in the asylum-seeking process once they actually arrive to the Canary Islands. In 2009, UNHCR conducted a comprehensive report detailing the biggest issues that the Canary Islands faced as a result of mixed migration patterns to the territory. First, there is the fact that all immigrants are immediately detained upon arrival:

“After the immediate needs of the new arrivals have been attended to, they are transported to a police station where they are interviewed by the police who seek information for the purposes of identification, determination of nationality and intelligence concerning the organization of irregular migration. Judicial procedures to authorize the detention of all migrants (with the exception of minors and those needing medical care) and to initiate the process of return also begun shortly after arrival.”

Within the Directive, the procedures on detention are quite clear and completely counter to these practices:

“Article 26: Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant.
2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of a speedy judicial review.”⁵²

UNHCR also found that while new arrivals receive information on their right to seek asylum, many do not understand the information they are presented with and, as a result, do not exercise their rights.

⁵¹ Gallagher, Riera, and Riiskjaer, 11.

⁵² Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 76

“During interviews with 30 recent arrivals in the three detention centres, the evaluation team was struck by the limited extent to which people understood their rights. While all reported that they received the information leaflet, few actually understood what it meant. Those who could read and write were able to decipher the words but were unable to explain key concepts such as that of ‘asylum’.”⁵³

Access to these detention centers by CEAR lawyers is limited and there is some concern that these attorneys are forced to categorically exclude any claims from nationals of supposed “safe third countries.”

“A second obstacle is the limited access that CEAR lawyers have to the detention centres. They visit when they are called by centre personnel or when they learn of groups of new arrivals. But they do not have a permanent presence or a set daily or weekly visiting time. Nor are they given access to common areas where detainees gather. Several of the lawyers I interviewed said that centre staff are reluctant to grant such regular and open access, fearing that it would lead to an avalanche of asylum claims.”⁵⁴

“A third obstacle is the limited capacity of CEAR staff to identify and adequately prepare all potential asylum cases. Upon arrival at a detention centre, CEAR lawyers receive and review the names and nationalities of the detainees, and based on a risk assessment of the country of origin, select certain individuals with whom to speak. This selection process generally excludes all those detainees who come from ‘low-risk’ countries or who may have non-traditional claims for asylum.”⁵⁵

There is concern that officials report nation of origin inaccurately as a way to categorically deport certain refugees.

“The evaluation team spoke to several detainees who alleged that their nationalities were listed incorrectly on the return orders issued by the police. Several detainees in the Hoya Fria centre in Tenerife who identified themselves as nationals of Burkina Faso, Chad, Gambia, Ivory Coast, Mali, Niger and the Sudan showed the evaluators their return orders. Most of the orders listed Mauritania as the country of nationality with a few listing Senegal - both countries with whom Spain has signed readmission agreements.”⁵⁶

By classifying refugees as Mauritanian or Senegalese, Spain is able to send refugees back to these “safe” third countries without having to process their applications further. Without access

⁵³ Gallagher, Riera, and Riiskjaer, 15.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

to legal representation during the nationality determination process or an option to challenge the outcome of this process, it is possible that refugees are deported to these third countries, far from their original homes and without real refuge. This practice violates the provision in the Directive for dealing with the scope of legal assistance and representation:

“Member States shall ensure that a legal adviser or other counselor admitted or permitted as such under national law who assists or represents an applicant under the terms of national law shall enjoy access to the information in the applicant’s file upon the basis of which a decision is or will be made.”⁵⁷

The Anti-Immigrant Push from Spain

Spain is a notoriously xenophobic country, and immigrants are often the target of racist harassment and policy. The Canary Islands push for externalization is an example of how an EU Member State has successfully projected its particular interests onto the EU stage.

Disagreements between the government, opposition part (Partido Popular) and the Canary Islands Government over the “context, response and implications of the constant inflow of undocumented immigrants” led to a call for EU action to settle the problem. The Spanish government presented FRONTEX as the necessary solution for the problem of immigration and the EU was used as a scapegoat for this internally highly controversial political debate over immigration. Intense pressure by Spanish authorities is what lead to the operations of HERA I, II, and III In the first place. “FRONTEX became ‘the institutional response’ to the constructed emergency situation in Spain.”⁵⁸

The popular Spanish newspaper, El Día published an extremely offensive, anti-immigrant, and blatantly racist article about Canary Islands immigration in April of 2006. The editorial wondered about the consequences of “the appearance of just one case of Ebola among

⁵⁷ Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 74.

⁵⁸ Carrera, 13.

the thousands of immigrants who arrive to the Canary Islands every year. Would it mean the end of this archipelago? What would happen with tourism, the main source of revenues?" adding: "It urges to repatriate and extradite immigrants ...since the Canary Islands are still a European region, neither South American nor African or Asian." A month later, *El Día* stated in another editorial that "The Canary Islands are suffering an invasion of pure black Africans whose race, as everybody knows, prevail over white people in case of mixture, except in cases of Aids or infectious diseases."⁵⁹

The Canary Islands government has taken what is a case of racism, rather than a serious immigrant burden, and turned it into an "EU Problem" to be dealt with at the EU level. They have received FRONTEX funding and support as a result, and promoted their interest of restricting immigration. Their chief complaint that won favor in the EU was their argument over burden sharing. Spain is very unfavorable to the prospect of granting more asylum applications, because the current common asylum regime, under the Dublin II regulations, make the first country within the Schengen Territory that an applicant enters the country where he/she applies for and is granted asylum. Being a border country, they've argued is an undue burden. Despite such extreme rhetoric, the number of asylum applications is quite low. In 2006, 366 people submitted claims to refugee status in the Canary Islands. That number increased to 655 in 2007 but dropped again to 356 applications in 2008.

Theoretical Connections

The EU has been trying to balance particular interests of member states with international human rights commitments, but particular interests, like that of Spain to limit the entrance of

⁵⁹ Rodrigo F Rodríguez Borges, "Xenophobic discourse and agenda-setting. A case study in the press of the Canary Islands (Spain)," *Revista Latina de Comunicación Social*, 65 (2010): 222-230, http://www.revistalatinacs.org/10/art2/895_ULL/17_RodrigoEN.html (accessed).

immigrants, have won out. The EU is still able to pass the legislation like the Asylum Procedure Directive and make dramatic commitments to refugee protection in line with the 1951 Geneva Convention standards. The legislation is certainly in place, but its vague nature and a lack of legal enforcement have rendered it ineffectual in changing refugee access. The intergovernmental nature of immigration and asylum law has undermined the ability to protect refugees. Countries have much different priorities and hold border control as a key part of their sovereignty. As such, they do not want the EU to involve itself or tell them how to manage their own borders. At the same time, they are able to assert their own interests and effectively negotiate for EU aid in achieving their desired immigrant outcomes. All of this demonstrates the negotiating power of member states in this policy arena. The supranational human rights framework of the CEAS is not strong enough to make a difference in asylum outcomes.

Chapter 5: Conclusion

How can Spain's externalization of border management and evasion of asylum responsibilities be explained through integration and international relations theories? The intergovernmental approach provides an appropriate framework. Intergovernmentalism relies heavily on realist ideas of the state and its roles. It notes that governments have gained the legal sovereignty of their countries and have legitimacy by being elected officials. They have much greater independence than in supranational theory and, consequently, integration happens on a

level that is intergovernmental, proceeding only as far as member states wish.⁶⁰

Intergovernmentalists argue that even though national interests can be a reason to integrate some policy arenas, this process would never include “high politics” like national security; governments control the degree and spread of integration in these policy arenas.⁶¹ Mearsheimer predicted in 1991 that the collapse of the Soviet Union and the subsequent return of a multipolar international system would lead to an increase in concerns about security and relative gains among EU member states and place a significant check upon future European integration.⁶²

This is something we clearly see in the case of EU immigration and asylum policy and its securitization. Since the early 1990s, migration has been constructed as a security issue—posing a threat to receiving countries by its alleged link to organized crime, terrorism, and Islamic fundamentalism. Though there is scant evidence that that these issues are caused by migrants, this has been a convenient way for political parties to channel fears of “otherness” and identify concrete measures to prevent it, via restrictive immigration and asylum systems. Because of its link to security, immigration is now a “high politics” area where member states demand intergovernmental decision-making and sovereignty over the mechanisms of migration and asylum.

Taking intergovernmentalism a step further, Freeman has contended that any cooperation in migration and asylum policy arenas between nation states had been a means of enhancing state attempts to bar entry to asylum-seekers. In addition, he contends that states amount certain immigration policies, but domestic politics rather than external pressure are what undermine

⁶⁰ Mark Pollack, "International Relations Theory and European Integration," *European University Institute*, 2009. http://www.eui.eu/RSCAS/WP-Texts/00_55.pdf

⁶¹ "Liberal Intergovernmentalism." *EU Politics*. <[http://testpolitics.pbworks.com/w/page/25854032/Liberal Intergovernmentalism](http://testpolitics.pbworks.com/w/page/25854032/Liberal%20Intergovernmentalism)>.

⁶² Mark Pollack, "International Relations Theory and European Integration," *European University Institute*, 2009. http://www.eui.eu/RSCAS/WP-Texts/00_55.pdf

such efforts.⁶³ Clearly, Spain's internal politics epitomize this trend. Xenophobic political sentiment throughout Spain has undermined asylum policy harmonization. The president of the Canary Islands is dependent upon popular support and when popular sentiment dictates that foreigners remain excluded, strategies that limit immigration and asylum seeker access to Spain will continue to undermine comprehensive refugee policy.

Realist theory further helps explain these phenomena in terms of power dynamics. Realism holds that world politics is driven by competitive self-interest.⁶⁴ There is no actor above the states capable of regulating their interactions, and the international system exists in a state of constant antagonism. States are the most important actors in this system, and the primary concern of all states is survival.⁶⁵ Spain exhibits these characteristics in its immigration and asylum strategies. Where asylum has been integrated, Spain has been concerned about "losing," relatively, to other member states. Because of the Dublin II regulation, which stipulates that the first country where an asylum seeker arrives is the country where his asylum application must be processed, member states have an interest in preventing asylum seekers from reaching their systems. As it stands, they cannot transfer asylum applications to another member state's system for processing. Countries with asylum systems at the border are easier for boat migrants to reach and since the Arab Spring revolutions in the Maghreb region, have often been the target of asylum seekers. The economic burden of keeping up clean, acceptable reception centers, making sea rescues, maintaining the proper medical personnel in order to serve those who have arrived, and maintaining the proper resources to integrate refugees and immigrants into society is all costly. To Spain, having to spend this money where other member states do not, because it is a country of arrival, is an undue economic burden that weakens their overall position in

⁶³ Freeman, 91.

⁶⁴ John Rourke, *International Politics on the World Stage*, (New York: McGraw Hill, 2010), 16.

⁶⁵ Donnelly, Jack. "The Ethics of Realism." *The Oxford Handbook of International Relations*, August 2008, p. 150.

geopolitical sphere. It is easier to prevent all migrants and potential asylum seekers from gaining access to the territory so that they never have to be processed in the first place.

Spain only typifies a trend occurring among other Mediterranean member states. Italy too has successfully evaded its refugee burden through immigration externalization. The most problematic manifestation of Italy's externalization push has been their relationship with Libya. The often-secretive agreements began in 2003 and ended in 2011 with the Libyan revolution. Human Rights Watch has accused Libya, not a party to the 1951 Refugee Convention, of dumping migrants in the Sahara to die.⁶⁶ Most controversial, and problematic for asylum seekers, has been the so-called "push-back" strategy. Beginning in 2007, Italy and Libya initiated joint maritime interception patrols in Libyan waters.⁶⁷ The goal of these operations was to push boats back into Libyan waters, then return them to Libya before they could reach European territory. These patrols endanger migrants crossing the waters and violate non-refoulement by pushing back refugees to their area of persecution. Because they cannot lodge asylum applications in Libya and are denied access to Europe, asylum seekers are not granted refuge in a safe territory.⁶⁸ Similarly, the Syrian refugee crisis has exposed Greece's unwillingness to accept asylum-seekers. Over 600,000 Syrians fleeing civil war have crossed into Turkey. From there, they often pay human traffickers to cross into Greece. Refugees in Greece are detained in overcrowded cells and asylum seekers are not allowed to work or receive government assistance. The Chief of Greek Police was quoted suggesting that the lives of irregular immigrants "be made unbearable. Describing the Greek response to the situation in late 2013, he said, "We aimed for

⁶⁶ Human Rights Watch. (2009) Pushed Back, Pushed Around. Available at <http://www.hrw.org/en/node/85582/section/9> (Accessed January 12, 2011).

⁶⁷ Ibid.

⁶⁸ Silja Klepp, "Italy and its Libya Cooperation Program: Pioneer of the European Union's Refugee Policy?." *Unbalanced Reciprocities: Readmission Agreements*, ed. by Jean-Pierre Cassarino (Washington: Middle East Institute),

increased periods of detention...we increased it to 18 months...for what purpose? We must make their lives unbearable.”⁶⁹ Spain is not the exception, but merely an example of a larger trend: where member states would have to take on a large refugee burden, particularly in comparison with other member states, they have evaded asylum responsibilities and pushed immigrants back to their region of departure.

Increased methods of burden sharing among EU countries might make Mediterranean countries like Spain, Italy, and Greece more willing to prioritize asylum seekers in the immigration process. This would include equalization of costs per applicant, financial compensation, and physical relocation of asylum seekers.⁷⁰ Burden sharing has been emphasized as a strategy to help streamline asylum policy. The Commission has advocated for this as a method of dealing with uneven asylum outcomes that were acknowledged in the 2007 Green Paper.⁷¹ UNHCR has also echoed these sentiments, stating “burden-sharing is a key to the protection of refugees and the resolution of the refugee problem... high protection standards will be difficult to maintain in a system which shifts responsibility to states located at the external border of the EU, many of which have limited asylum capacity.”⁷² With better burden sharing, Mediterranean states like Spain and Italy would not have as large of an incentive to create restrictive immigration policies that prevent asylum seekers from reaching Europe.

With many rhetorical commitments to refugee protection, the EU has at least tried give the impression that it cares about preserving human rights. Unfortunately, intergovernmentalism

⁶⁹ Apostolou, Nikolia. Christian Science Monitor, "Greece to Syrian refugees: Don't get too comfortable." Last modified December 23, 2013. <http://www.csmonitor.com/World/Europe/2013/1223/Greece-to-Syrian-refugees-Don-t-get-too-comfortable>.

⁷⁰ "Asylum Study Backs Shared Responsibility between EU Countries." *Europarl.europa.eu*. European Parliament, 3 Mar. 2010. 7 Dec. 2013. <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20100226STO69652+0+DOC+XML+V0//EN>>.

⁷¹ Brussels European Council, 4/5 November 2004, Presidency Conclusions, page 18.

⁷² Official Documents Burden-Sharing - Discussion Paper Submitted By UNHCR Fifth Annual Plenary Meeting Of The APC; ISIL Year Book of International Humanitarian and Refugee Law, Vol. 17 (2001); access: <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/17.html>

in this policy arena is undermining human rights goals. Until the EU rethinks its approach, by either shifting its immigration funding priorities or increasing burden sharing, the intergovernmental nature of this policy arena will continue to lend itself to piecemeal, shortsighted responses from member states at the expense of a comprehensive immigration system that allows asylum seekers in and limits immigrant deaths.

Bibliography

"Advocacy." *UNHCR News*. United Nations High Commissioner for Refugees, n.d. Web.

<<http://www.unhcr.org/pages/49c3646c104.html>>.

"Common European Asylum System." *DGs*. Web. <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm>.

"Liberal Intergovernmentalism." *EU Politics*. <[http://testpolitics.pbworks.com/w/page/25854032/Liberal Intergovernmentalism](http://testpolitics.pbworks.com/w/page/25854032/Liberal%20Intergovernmentalism)>.

"Asylum Study Backs Shared Responsibility between EU Countries." *Europarl.europa.eu*. European Parliament, 3 Mar. 2010. 7 Dec. 2013.

Amnesty International. *Mauritania: Nobody Wants to Have Anything to Do With Us*. London, 2008.

Apostolou, Nikolia. Christian Science Monitor, "Greece to Syrian refugees: Don't get too comfortable." Last modified December 23, 2013. <http://www.csmonitor.com/World/Europe/2013/1223/Greece-to-Syrian-refugees-Don-t-get-too-comfortable>.

Brussels European Council, 4/5 November 2004, Presidency Conclusions, page 18.

Carrera, Sergio. "The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands." *Centre for European Policy Studies*: (p. 11, 14). <http://ssrn.com/abstract=1338019> (accessed).

Charter of Fundamental Rights of the European Union, OJ C 364/01, 18 Dec. 2000 (entry into force: 1 Dec. 2009). Can be accessed: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Comisión Española De Ayuda Al Refugiado. *La Situación De Las Personas Refugiadas En España*. Madrid, 2013.

Costello, Cathryn. "The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection, and the Dismantling of International

Protection?." *European Journal of Migration and Law*. no. 1 (2005): 35-69 (p. 37).

Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 1.

Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 76

Council Directive number 85 of 2005, Official Journal of 1 December 2005, L 362, page 74.

Council of the European Union, The Stockholm Programme – An Open and Secure Europe
Serving and Protecting the Citizens

Daniele Joly, "The Porous Dam: European Harmonization On Asylum In The

Nineties,"*International Journal of Refugee Law*, 6, no. 2 (1994): 159–193 (p. 160),

Dec. 2009). Can be accessed: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Donnelly, Jack. "The Ethics of Realism." *The Oxford Handbook of International Relations*,
August 2008, p. 150.

European Commission, DG Communication, News, *EU Immigration: Frontex Operation*,
12/09/2006.

European Union, "How the EU Works-Countries." Accessed April 4, 2014. http://europa.eu/about-eu/countries/index_en.htm.

European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm

European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm

- European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.europarl.europa.eu/summits/tam_en.htm
- Freeman, Gary. *The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States. Challenge to the Nation-State: Immigration in Western Europe and the United States*. Edited by Christian Joppke. Oxford: Oxford University press, 1998.
- FRONTEX, "Mission and Tasks." Accessed April 4, 2014. <http://www.frontex.europa.eu/about-frontex/mission-and-tasks>.
- Fullerton, Maryellen. "Inadmissible in Iberia: The Fate of Asylum Seekers in Spain and Portugal." *Oxford University Press*, 2005. 660–687 (p. 670).
- Gallagher, Anna Marie, José Riera, and Maria Riiskjaer. *Refugee protection and international migration: a review of UNHCR's role in the Canary Islands, Spain*. Geneva: United Nations High Commissioner for Refugees Policy Development and Evaluation Service, 2009 (p. 39). Can be accessed: <http://www.unhcr.org/4a1d2d7d6.pdf>
- Gil Bazo, Maria Teresa. "The Role of Spain as a Gateway to the Schengen Area: Changes in the Asylum Law and their Implications for Human Rights." *International Journal of Refugee Law*. no. 1/2 (1998): 214-229 (p. 214).
- Human Rights Watch. (2009) Pushed Back, Pushed Around. Available at <http://www.hrw.org/en/node/85582/section/9> (Accessed January 12, 2011).
- Juss, Satvinder. "The Decline and Decay of European Refugee Policy." *Oxford Journal of Legal Studies*. no. 4 (2005): 749-792.

- Kaunert, Christian, and Sarah Leonard. "The European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?." *Refugee Survey Quarterly*. no. 4 (2012): 1-20 (p. 10).
- Kaunert, Christian. "Liberty versus Security? EU Asylum Policy and the European Commission." *Journal of Contemporary European Research*. no. 2 (2009): 148-170 (p. 156).
- Klepp, Silja "Italy and its Libya Cooperation Program: Pioneer of the European Union's Refugee Policy?." *Unbalanced Reciprocities: Readmission Agreements*, ed. by Jean-Pierre Cassarino (Washington: Middle East Institute).
- Moravcsik, Andrew. "Liberal Intergovernmentalism and Integration: A Rejoinder ." *Journal of Common Market Studies*. no. 4 (1995): 611–628.
- Moravcsik, Andrew. *The Choice for Europe: Social Purpose & State Power from Messina to Maastricht*. Ithaca: Cornell University Press, 1998.
- Official Documents Burden-Sharing - Discussion Paper Submitted By UNHCR Fifth Annual Plenary Meeting Of The APC; ISIL Year Book of International Humanitarian and Refugee Law, Vol. 17 (2001); access: <http://www.worldlii.org/Int/journals/ISILYBIHRL/2001/17.html>
- Pirjola, Jari. "European Asylum Policy - Inclusions and Exclusions under the Surface of Universal Human Rights Language." *European Journal of Migration and Law*. no. 4 (2009): 347-366.
- Pollack, Mark. "International Relations Theory and European Integration." *European University Institute*. 2009. http://www.eui.eu/RSCAS/WP-Texts/00_55.pdf

Readmission Agreements: A Mechanism for Returning Irregular Migrants. Rep. no. 12168.

Strasbourg: Council of Europe, 2010.

Rodríguez Borges, Rodrigo F. "Xenophobic discourse and agenda-setting. A case study in the press of the Canary Islands (Spain)." *Revista Latina de Comunicación Social*. (2010): 222-230. http://www.revistalatinacs.org/10/art2/895_ULL/17_RodrigoEN.html (accessed).

Rourke, John. *International Politics on the World Stage*. New York: McGraw Hill, 2010.

Schmitter, Philippe, "Ernst B. Haas and the legacy of Neofunctionalism." *Journal of European Public Policy*. no. 2 (2005): 255-272 (p. 257),

The United Nations High Commissioner for Refugees, *Text of the 1951 Convention Relating to the Status of Refugees*, 1951, p. 14 available from <http://www.unhcr.org/3b66c2aa10.html>